

WeCare Transportation, LLC and International Brotherhood of Teamsters, Local 294. Case 3–RC–11819

September 17, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

On April 24, 2008,¹ the Regional Director for Region 3 issued a Decision and Direction of Election in which she found that the petitioned-for unit of long-haul truckdrivers employed at the Employer's Canaan, New York facility was an appropriate unit for collective bargaining. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review, contending that the unit must also include long-haul truckdrivers working out of its Weedsport, New York facility.²

After careful consideration of the entire record, we find, contrary to the Regional Director, that the Employer has rebutted the presumption that the single-facility unit is appropriate, and we find that the unit must include the long-haul truckdrivers at the Weedsport facility. Accordingly, we grant review, reverse the Regional Director, and dismiss the petition.³ We also deny as moot the Employer's motion to stay the election.⁴

I. FACTS

The Employer transports various types of waste and other materials from transfer stations and customers to landfills in New York, Massachusetts, and Connecticut. It serves private and municipal transfer stations over a geographic area ranging from Waterloo, New York, to the Hudson/Marlboro, Massachusetts corridor, and south to New Haven and New Canaan, Connecticut. The Employer maintains four terminals: its headquarters/terminal in Weedsport, New York, and terminals in Canaan, New York, Spencer, Massachusetts, and Mashpee, Massachu-

setts.⁵ The only terminals at issue here are those in Weedsport and Canaan.⁶ There is a total distance of 194 miles between these two facilities.

At the Canaan terminal, the Company employs 18 long-haul truckdrivers, dispatcher, Shaun Santoro, terminal manager, Bob McNamara, and Paul Tingler, who oversees the transfer station duties. At Weedsport, there are 65 long-haul truckdrivers, the Employer's president, Thomas Jarrard, Director of Operations John Wallace, Controller Colleen Seeley, Benefits Coordinator Terry Potter, and three dispatchers.⁷

The Weedsport office maintains the Canaan and Weedsport employees' personnel files, timecards, payroll records, and other administrative items. The Employer also tracks the Weedsport and Canaan drivers' medical cards and licenses in a computer system at Weedsport to ensure that they are up to date.

A formal hiring committee, which is based out of the Weedsport terminal, makes all of the Employer's hiring decisions.⁸ The hiring committee is comprised of the Employer's president, its CEO, and its controller. Requests for new hires at both facilities are made to the committee, which in turn determines whether the position must be filled. Dispatchers at both facilities often notify the committee if someone is seeking a job with the Employer, or they may take an application and pass it along to Wallace.

According to the Employer's testimony, any terminations and other major disciplinary decisions for drivers at either facility are to be brought to Wallace's attention at Weedsport. He is responsible for investigating the conduct at issue and determining whether discipline is warranted. There have been no instances of disciplinary problems with the Canaan drivers since the Employer acquired that terminal.

There are three dispatchers at the Weedsport terminal and one at the Canaan terminal. These dispatchers report to Wallace. The dispatchers answer calls from customers, communicate with drivers on a regular basis, handle "problem" calls from drivers (e.g., mechanical issues), assign drivers to particular runs based on the drivers'

¹ All dates hereafter are in 2008, unless otherwise indicated.

² The parties stipulated that the appropriate unit shall include all full-time and regular part-time long-haul truckdrivers, excluding residential area pickup employees (curbside drivers), dispatchers, mechanics, transfer station operations, clerical employees, professional employees, and supervisors as defined in the Act.

³ The Petitioner has indicated that it is not willing to proceed to an election in a broader unit.

⁴ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

⁵ The Employer acquired the Canaan terminal on November 15, 2007, and the Canaan employees became employed by the Employer on November 16, 2007.

⁶ There is no evidence regarding the drivers employed by the Employer at its Massachusetts terminals or regarding the specific operations of those terminals. The Employer does not seek to include drivers from its Massachusetts terminals in the proposed bargaining unit.

⁷ The parties took no position as to whether McNamara, Tingler, Jarrard, Wallace, or Seeley are statutory supervisors.

⁸ The record does not indicate whether this hiring committee is involved in the hiring of employees at the Employer's Massachusetts terminals.

qualifications,⁹ and prepare the daily dispatch sheets. The dispatch sheets track which customers drivers will be servicing, how many loads the drivers are required to carry, and which drivers are assigned to these loads. The Canaan and Weedsport terminals maintain separate dispatch sheets.

Dispatcher Santoro is responsible for creating the daily dispatch sheet at the Canaan terminal. After creating the initial dispatch sheet, Santoro forwards it, via fax, to Weedsport, where Wallace reviews it and makes any necessary changes. Wallace then returns the sheet to Santoro. Santoro and Wallace often speak several times each day to discuss the dispatch sheet.

In addition to creating the dispatch sheet, Santoro and the other dispatchers grant time-off to drivers, schedule their vacations, and report driver performance/discipline issues to Wallace. However, it is undisputed that, at least with respect to Santoro, the dispatcher exercises no independent judgment in performing these duties. The Regional Director specifically found that dispatcher Santoro is not a statutory supervisor, and no party requested review of this finding.

Canaan and Weedsport drivers have the same job responsibilities. They haul waste from customer sites to landfills using trailer-type trucks. Every morning, each driver is expected to pick up his dispatch paperwork and do a pretrip inspection of his vehicle. Once at the customer site, the driver “live loads” the waste; this means that the driver brings his trailer onto the customer’s site and the customer then loads the waste directly into the trailer.¹⁰ The driver then goes to the landfill and offloads the waste. After unloading the waste, the driver returns to his respective terminal, fuels his truck, conducts a posttrip inspection, and turns in his paperwork to the dispatcher.

All drivers are required to fill out a daily work order detailing where they started their work, where they ended their work, what load they picked up, and a bill of lading. At the Canaan terminal, dispatcher Santoro collects these sheets and sends them to Weedsport daily. He also collects the Canaan drivers’ timesheets and forwards them to Controller Seeley. Likewise, the dispatchers at Weedsport forward the drivers’ timesheets to Seeley.

Both groups of drivers primarily haul waste to the Seneca Falls landfill in New York. This landfill is ap-

proximately 25 miles from the Weedsport terminal. Nearly 75 percent of the Canaan drivers and 95 percent of the Weedsport drivers go to this landfill to dump waste. At the landfill, the drivers from both terminals may see each other while waiting in the queue line, but they rarely, if ever, speak to one another there. Canaan drivers stop at the Weedsport terminal when they have been dispatched to backhaul a load of salt, need fuel, or have an equipment problem.

The Canaan and Weedsport drivers share similar qualifications. They must have a CDL class A driver’s license. They also may obtain additional certifications or endorsements, but these are not required by the Employer.

Both groups of drivers are paid biweekly on the same day. They are compensated on a per drop basis, and the rates are the same for drivers at both terminals. They receive the same fringe benefits, such as medical, dental, and 401(k), and they receive the same employee handbook, drivers’ procedures manual, and safety manual. They also undergo the same job orientation.

Canaan drivers appear frequently on the Weedsport dispatch schedule. This occurs when the Canaan drivers are scheduled to run the same routes and service the same customers as the Weedsport drivers, or when they are required to pick up a load of salt, which is stockpiled at the Weedsport terminal.¹¹ The Canaan drivers, who appear as “Eco” on the Weedsport dispatch sheet, are dispatched out of the Canaan terminal.¹² Between January 1 and March 25, 2008, the Canaan drivers appeared on the Weedsport dispatch schedule nearly 470 times. Some days, only two drivers from Canaan are on the Weedsport schedule, and on other days, up to 14 Canaan drivers appear on this schedule. There have been no instances of Weedsport drivers appearing on the Canaan dispatch sheet.

There is no history of bargaining on either a single facility or multifacility basis. As noted above, the Employer began employment of the Canaan drivers in late 2007.

II. ANALYSIS

With respect to unit determinations of employees at single versus multilocation units, the Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. See *J & L*

⁹ For instance, some drivers only take local runs, and some drivers are not certified for dump trailers or triples or other types of runs.

¹⁰ Sometimes drivers will do a “drop and hook” at the customer site. This requires the driver to drop off his empty trailer at the customer’s site and pick up a previously loaded trailer at that location. The drivers also perform “shuttle runs,” which require the driver to go from the terminal to a customer and then back to the terminal. The driver does not go to the landfill in a shuttle run.

¹¹ The Weedsport dispatch sheet also lists subcontractors who provide service to Weedsport customers.

¹² “Eco” is presumably a remnant of the time when the terminal was owned by Eaco Operations.

Plate, Inc., 310 NLRB 429 (1993). The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness. However, the Board “has never held or suggested that to rebut the presumption a party must proffer ‘overwhelming evidence . . . illustrating the complete submersion of the interests of employees at the single store,’ nor is it necessary to show that ‘the separate interests’ of the employees sought have been ‘obliterated.’” *Petrie Stores Corp.*, 266 NLRB 75, 76 (1983).

To determine whether the single-facility presumption has been rebutted, the Board examines a number of community-of-interest factors, including (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between the locations; and (5) bargaining history, if any exists. *J & L Plate, Inc.*, supra at 429; *R & D Trucking, Inc.*, 327 NLRB 531 (1999).

In finding the single-facility unit appropriate here, the Regional Director found that, despite a lack of statutory supervisory authority, the Canaan dispatcher operates with significant local autonomy over that facility; there is a lack of contact and interchange between employees at Canaan and Weedsport; and there exists considerable geographic separation between the two facilities. The Regional Director found that this evidence outweighed the evidence of centralized control of labor relations and similarity of skills, job functions, and working conditions. Therefore, she directed an election in the petitioned-for unit of Canaan employees.

Contrary to the Regional Director, we find that there exists a substantial degree of temporary employee interchange and functional integration between the two terminals. Further, we find that the autonomy at Canaan is not nearly as substantial as the Regional Director suggests. In conjunction with the Employer’s centralized administration of labor relations and operations, and the fact that all drivers perform the same duties under similar working conditions, we conclude that the two groups have been so effectively merged that the Weedsport terminal drivers must be included in the petitioned-for unit. Accordingly, we reverse the Regional Director.

The Regional Director found substantial evidence of centralized control of labor relations and operations. Wages and benefits are determined centrally. Employee timecards, personnel files, customer invoices, and other administrative records are processed and housed at the Employer’s Weedsport terminal. All drivers are given the same employee manual and driver procedures handbook. All drivers are paid on the same biweekly basis

and receive the same wages and benefits. The Regional Director further found that employees at both facilities have similar skills, job functions, and working conditions. This evidence supports finding a multifacility unit. See *Trane*, 339 NLRB 866 (2003); *Dayton Transport Corp.*, 270 NLRB 1114 (1984).

In addition, we find significant employee interchange and functional integration between the two terminals. From January through March 2008, the Canaan drivers appeared on the Weedsport dispatch schedule almost every day. They were assigned to run the same routes and service the same customers as the Weedsport drivers. In fact, on 56 out of 84 days reviewed, at least two or more drivers from the Canaan terminal were dispatched to the Weedsport schedule. More strikingly, there have been 469 instances of Canaan drivers being transferred into the Weedsport routes. In *Dayton Transport Corp.*, supra, the Board found that the single-facility presumption had been rebutted where, in 1 year, there were approximately 400–425 temporary employee interchanges between terminals among a work force of 87.¹³ The Board found this evidence more than sufficient to show substantial employee interchange and integration. Likewise, in *Trane*, supra, the Board found that crossovers between two facilities that were over 100 miles apart occurred “hundreds of times” a year. This regular interchange supported the multifacility unit. Similarly, we find that over 450 instances of interchange here show significant functional integration and further support a finding that the single-facility presumption is rebutted.

Furthermore, on any given day, there are up to 14 (out of 18) Canaan drivers on the Weedsport dispatch schedule. That is, almost 80 percent of Canaan drivers run the same routes and service the same customers on those days as Weedsport drivers.¹⁴ Additionally, 75 percent of the Canaan drivers daily haul waste to the same landfill that nearly all Weedsport drivers do. Both groups of drivers stop at the Weedsport terminal when backhauling a load of salt, when they need to fuel up, or when they have mechanical problems.

¹³ The temporary employees were directly supervised by the terminal manager from the point of dispatch. *Dayton Transport*, supra at 1116.

¹⁴ The Regional Director found little relevance in the fact that Canaan drivers routinely appear on the Weedsport dispatch schedule, i.e., servicing Weedsport customers, because there was no evidence that the Canaan drivers ever take direction from the Weedsport dispatchers when they service Weedsport customers. We do not agree. Contrary to the Regional Director, we find the fact that the drivers are dispatched by their respective dispatchers does not negate the significance of the high level of interchange, given the Regional Director’s finding that the dispatchers’ direction of the drivers is routine and nonsupervisory in nature.

While the Regional Director relied on the absence of contact between the Weedsport and Canaan drivers in finding the single-facility unit appropriate, the record does not indicate that the Canaan drivers have any contact among each other. Thus, we do not find the lack of contact between Canaan and Weedsport drivers to be a significant factor, particularly in light of the nature of their duties, i.e., long-haul trucking.

We further find, contrary to the Regional Director, that the record evidence does not demonstrate the exercise of significant autonomy over local terms and conditions through the Canaan dispatcher, Shaun Santoro. As the Regional Director found, Santoro prepares the Canaan dispatch sheet that tracks which customers drivers will be servicing, how many loads the drivers are required to carry, and which drivers are assigned to these loads. However, this function requires no independent judgment and, as the Regional Director found, is non-supervisory in nature. Moreover, although Santoro creates the dispatch sheet, Wallace has the ultimate authority over this sheet because he reviews the sheet and changes it as he sees fit. Wallace is in constant communication with Santoro, via phone and fax, throughout the day to discuss any further adjustments to the dispatch sheet. In fact, Wallace testified that not a day goes by where he does not review and revise the Canaan dispatch sheet. Because Santoro's authority to create and implement the dispatch sheet is essentially clerical in nature and is circumscribed by Wallace's review, we do not find that Santoro exercises significant local autonomy in this respect. See *Trane*, supra at 868 (excluded facility lacked "any separate supervision or other oversight," but instead received daily oversight by central management).

Furthermore, it is undisputed that Dispatcher Santoro does not have the authority to terminate or discipline the Canaan drivers. Rather, those responsibilities reside with John Wallace at Weedsport.¹⁵ It is also uncontroverted that Santoro does not hire Canaan drivers. In addition, when Canaan drivers encounter issues or express concerns regarding their pay or the routes that they are assigned to, they discuss their concerns with Wallace. Wallace testified that in the 4 months since the Employer acquired the Canaan terminal, five or six Canaan drivers have come to see him at Weedsport to discuss "run issues," pay concerns, and "what's going on in the future." According to Wallace, the dispatcher told the drivers that if they had any "problems," they should go see Wallace. This testimony was corroborated by union witness and

¹⁵ Wallace must get approval from the Employer's president, Thomas Jarrard, before actually terminating an employee.

Canaan driver Michael LaVasseur. He testified that while he has never personally met Wallace, he does know of a handful of Canaan drivers who have gone to Weedsport to speak with Wallace regarding pay issues. Because Canaan truckdrivers look to Wallace, and not Santoro, for the resolution of matters such as pay and assignments, and because the Regional Director found Santoro's role in scheduling, dispatching, and granting time-off to be routine and clerical in nature, we find that Santoro actually possesses very limited local autonomy at the Canaan terminal. See, e.g., *Renzetti's Market*, 238 NLRB 174, 175 (1978).

This evidence indicates that Wallace effectively supervises the drivers at the Canaan and Weedsport terminals, at least with respect to the critical areas of firing, discipline, and adjustment of grievances. Further, all hiring decisions for both facilities are made by a formal hiring committee, which is based out of the Weedsport terminal. Finally, there is no record evidence that there is separate supervision of the petitioned-for drivers by the terminal manager or any other Canaan person. Accordingly, it appears that there is common immediate supervision of both groups of drivers in several important aspects.

Although we acknowledge that there are 194 miles between the Canaan and Weedsport terminals, we find that the nature of the Employer's business renders the distance between the two terminals less critical to a determination of proper unit scope. See *Dayton Transport*, supra; *Bowie Hall Trucking*, 290 NLRB 41 (1988). Moreover, this factor is overcome by the significant employee interchange in particular, as well as the lack of local autonomy; the centralization of labor relations; and the similarity of skills, pay, and job functions at both the locations.¹⁶

Accordingly, we find, contrary to the Regional Director, that the only appropriate unit must include long-haul truckdrivers employed at both the Weedsport and Canaan truck terminals. Because the Petitioner has indicated that it is not willing to proceed to an election in the broader unit found appropriate, we shall dismiss the petition.

ORDER

The petition is dismissed.

¹⁶ Because of the significant and substantial employee interchange between the Weedsport and Canaan drivers, the circumstances are distinguishable from those in *Bowie Hall Trucking*, supra at 43 (no evidence of substantial or significant employee interchange between terminals).